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Proposal submitted by Mexico in relation to a draft agreement on the privileges and immunities of the International Criminal Court

New article 22 bis

1. During the negotiation of the draft Agreement on the Privileges and Immunities of the International Criminal Court, an issue was raised regarding the privileges and immunities to be granted to nationals and permanent residents in the State of their nationality or residence. Due to lack of time, no decision was taken by the Preparatory Commission. However, delegations agreed that the issue was important and merited further consideration. A note recommending that the Assembly of States Parties examine the question when considering the draft Agreement on Privileges and Immunities of the ICC was included in the report of the Preparatory Commission (see PCNICC/2001/1, para. 8).

2. In order to facilitate such examination, the following proposal is submitted for the consideration of delegations participating at the first session of the Assembly of States Parties to the ICC Statute:

"Article 22 bis

"National and permanent residents

"1. Except insofar as additional privileges and immunities may be granted by the State Party concerned, and without prejudice to paragraph 6 of article 15 and paragraph 1 (d) of article 16, a person referred to in articles 15, 16, 18, 19 and 21 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for the independent performance of his or her functions or his or her appearance or testimony before the Court:

(a) Immunity from personal arrest and detention;

(b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by that person in the performance of his or her functions for the Court or in the course of his or her appearance or



testimony, which immunity shall continue to be accorded even after the person has ceased to exercise his or her functions for the Court or his or her appearance or testimony before it;

(c) Inviolability of papers and documents in whatever form and materials relating to the exercise of his or her functions for the Court or his or her appearance or testimony before it;

(d) For the purposes of their communications with the Court and for a person referred to in article 19, with his or her counsel in connection with his or her testimony, the right to receive and send papers in whatever form.

"2. Except insofar as additional privileges and immunities may be granted by the State Party concerned, a person referred to in articles 20 and 22 shall, in the territory of the State Party of which he or she is a national or permanent resident, enjoy only the following privileges and immunities to the extent necessary for his or her appearance before the Court:

(a) Immunity from personal arrest and detention;

(b) Immunity from legal process in respect of words spoken or written and all acts performed by that person in the course of his or her appearance before the Court, which immunity shall continue to be accorded even after his or her appearance before the Court."

1. Explanation

3. In general, nationals and permanent residents do not enjoy in the State of their nationality or residence the same privileges and immunities granted to other persons under international law.

4. The inclusion of a provision in the draft Agreement clarifying the scope of privileges and immunities to be granted to national and permanent representatives will reflect existing international practice and facilitate the ratification of the Agreement by States.

5. Draft article 22 is not, however, an absolute prohibition and leaves open the option for States to grant additional privileges and immunities to their national or permanent residents where required.

6. The proposed draft takes into account the kind of privileges and immunities that permanent or national residents will definitely need to perform their functions before the Court.

2. Explanation of the drafting of the discussion document

7. Articles 13, 14 and 17 were omitted from the scope of the proposal since articles 13 and 14 already solve the issue of privileges and immunities granted to State representatives in the State of their nationality and article 17 grants very limited privileges and immunities.

8. It was necessary to split the proposal into two paragraphs, the first dealing with persons referred to in articles 15, 16, 18, 19 and 21, and the second with persons referred to in articles 20 and 22, the reason being the difference in the kind of privileges and immunities granted in those provisions. Giving the same treatment

to both categories will have the effect of enlarging the privileges and immunities granted to victims and other persons in articles 20 and 22.

9. Since not all the persons mentioned in paragraph 1 perform functions for the Court (in particular, witnesses), the chapeau includes the phrase "to the extent necessary for the independent performance of his or her functions or his or her appearance or testimony before the Court". This language is intended to include all persons covered by the provision.

10. The drafting used follows current language of the draft Agreement.
